



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

AUG 24 2010

Thomas B. Kelley, Esq.
Levine Sullivan Koch and Schulz, LLP
1888 Sherman Street, #370
Denver, CO 80203

RE: MUR 6247
Anschutz Company;
Clarity Digital Group, LLC,
d/b/a www.examiner.com

Dear Mr. Kelley:

On January 26, 2010, the Federal Election Commission notified your clients, Anschutz Company and Clarity Digital Group, LLC, d/b/a www. examiner.com, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on July 27, 2010, voted to dismiss this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

If you have any questions, please contact Peter Reynolds, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Mark D. Shonkwiler". To the right of the signature is a small, stylized monogram or set of initials.

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** **www.examiner.com**

MUR: 6247

5 **Anschutz Company**

6 **Clarity Digital Group, LLC**

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8 This matter was generated by a complaint filed by Vickers L. Cunningham. *See*
9 2 U.S.C. § 437(g)(a)(1). The complaint alleged that Anschutz Company (“Anschutz”)
10 and Clarity Digital Group, LLC, d/b/a Examiner.com (“Examiner”) (together, the
11 “Examiner Entities”), violated the Federal Election Campaign Act of 1971, as amended
12 (the “Act”), in connection with a posting made on Examiner’s website relating to a
13 fundraiser for David Smith’s congressional campaign (the “Announcement”). In light of
14 the *de minimis* amount of the alleged in-kind contribution, the Commission exercised its
15 prosecutorial discretion and dismissed the complaint.

16 Examiner operates a website that provides local information, resources, and
17 perspectives on approximately 240 different cities in North America, almost exclusively
18 through user-generated content. Examiner Resp., 2. Contributors (hired as independent
19 contractors and referred to as “Examiners”) are recruited and paid for their contributions
20 to the website on the basis of page views, unique visitors, session length, and advertising
21 performance. *Id.* While Examiner does not review or edit postings submitted by
22 Examiners, it retains the right to remove any posting in the event the posting does not

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1 comply with Examiner's policies, or in the event Examiner finds the posting
2 unacceptable for any other reason. *Id.*

3 David Smith ("Smith") was a candidate for the Republican nomination in the race
4 for U.S. Representative from Texas' 32nd Congressional District.¹ A Statement of
5 Organization designating Friends of David Smith as Smith's principal campaign
6 committee was filed on December 30, 2009.

7 Smith became the Examiner assigned to report on Dallas County Republican
8 politics in July 2009, and since that time has contributed approximately 300 postings.

9 See Dallas County Republican Examiner's Articles, <http://www.examiner.com/x-17004->

10 Dallas-County-Republican-Examiner. On November 3, 2009, Smith posted the

11 Announcement on Examiner's website declaring his candidacy and including information
12 about his "Fundraiser & Campaign Kick-Off," to be hosted at a local restaurant. The

13 Announcement also included a disclaimer stating that the "event notification" was not

14 subject to state reporting requirements. Examiner Resp., 2. In his response, Smith states

15 that he is paid an average of one cent per page view for his postings, and that his

16 remuneration for the posting in question was approximately one dollar. Smith Resp., 2.

17 The Examiner estimated that under their contract, Smith earned a total of \$8.06 for the

18 posting. Examiner Resp., 2.

19 The Complaint alleges that the Examiner Entities made prohibited corporate

20 contributions in connection with a coordinated communication in violation of 2 U.S.C. §

¹ The Republican primary was held on March 2, 2010, and the incumbent, Rep. Pete Sessions, garnered approximately 83% of the votes cast, defeating Smith. Office of the Secretary of State of Texas, 2010 Republican Party Primary Election, Election Night Returns at http://enr.sos.state.tx.us/enr/results/mar02_148_state.htm.

1 441b. Complainant further alleges that the Announcement failed to include disclaimers
2 required by 2 U.S.C. § 441d.

3 After receiving the Complaint, Examiner removed the Announcement from its
4 website and suspended Smith from posting additional material pending the resolution of
5 this matter. Examiner Resp., 3. The Examiner Entities' response to the Complaint
6 argues that: (1) there has been no transfer of value that could qualify as a "contribution"
7 or "expenditure" under the Act; (2) even if the Announcement did qualify as a
8 "contribution" or "expenditure," the press exemption applies; (3) Examiner, as an
9 "independent internet medium," has no disclosure or disclaimer requirement with respect
10 to the Announcement; (4) Examiner is immune from civil liability pursuant to Section
11 230 of the Communications Decency Act of 1996; and (5) the amount in question is *de*
12 *minimis*. See generally Examiner Resp.

13 Smith also filed a response in which he asks the Commission to dismiss the
14 Complaint brought by a supporter of his political opponent because the Announcement
15 "was treated not as a paid advertisement but as newsworthy content" and Smith's "intent
16 was not to skirt the laws . . . but to make public an announcement." Smith Resp., 4.

17 The amount of the alleged in-kind contribution in this matter is *de minimis*.
18 Additionally, the evidence shows that Examiner removed the Announcement from its
19 website upon receiving notification of the Complaint. In light of the overall
20 circumstances, it would not be an efficient use of the Commission's resources to pursue
21 this matter further. Accordingly, the Commission exercised its prosecutorial discretion
22 and dismissed the complaint as to Anschutz Company and Clarity Digital Group, LLC,
23 d/b/a Examiner.com. See *Heckler v. Chaney*, 470 U.S. 821, 831 (1985). The

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- 1 Commission did not determine the applicability of the press exemption or Section 230 of
- 2 the Communications Decency Act of 1996 to this matter.

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